

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:04CR523
	)	
v.	)	
	)	
MARY E. MONIZ,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the court on the defendant's motion for modification or reduction of sentence based upon intervening post-sentence change in the guidelines, [Filing No. 72](#) (the docket entry incorrectly titles the defendant's motion as a motion to reduce sentence pursuant to the crack cocaine Amendment 706). The defendant's motion references Amendment 12, but in reviewing the context of the motion, the defendant seeks relief under Amendment 709 to the Sentencing Guidelines which addresses the manner in which the defendant's criminal history category is calculated.

The court has reviewed the record and determines that the defendant is not eligible for a recalculation of her sentence under Amendment 709. Even if the defendant had qualified, she would have been entitled to, at most, a reduction of 2 criminal history points, still placing her in criminal history category III. Therefore, the defendant's motion is denied.

Additionally, the court vacates its text order (Filing No. 73) appointing the Federal Public Defender as counsel for the defendant because this case does not involve the retroactivity of the crack cocaine guidelines and the court finds no basis for the appointment of counsel.

IT IS ORDERED:

1. Defendant Mary E. Moniz's motion for modification or reduction of sentence based upon intervening post-sentence change in the guidelines (Filing No. 72) is denied.
2. This court's order appointing the Federal Public Defender as counsel for the defendant's crack cocaine re-sentencing (Filing No. 73) is vacated.

DATED this 18<sup>th</sup> day of August, 2008.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge